

In the Matter of Rashonn Drayton
DOP Docket No. 2005-2251
(Merit System Board, decided November 3, 2005)

The appeal of Rashonn Drayton, a Human Services Assistant with the Hunterdon Developmental Center, Department of Human Services, of his removal, effective December 18, 2004, on charges, was before Administrative Law Judge John Schuster III (ALJ), who rendered his initial decision on September 20, 2005. No exceptions were filed by the parties.

Having considered the record and the ALJ's initial decision, and having made an independent evaluation of the record, the Merit System Board (Board), at its meeting on November 3, 2005, adopted the ALJ's recommendation to dismiss the appellant's appeal for his failure to appear at the hearing at the Office of Administrative Law (OAL). However, the Board did not adopt the ALJ's recommendation to uphold the appellant's removal based on his failure to appeal subsequent charges.

DISCUSSION

The appellant was charged with being absent from work without permission. Specifically, the appointing authority asserted that the appellant failed to provide medical verification for his absences on June 26, 2004, July 2, 2004, and July 10, 2004. Upon the appellant's appeal to the Board, the matter was transmitted to the OAL for a hearing as a contested case.

The initial decision sets forth that the appellant failed to appear at the OAL on April 19, 2005 for a settlement conference. On April 20, 2005, the appellant submitted a letter which allegedly provided inaccurate and misleading information as to why he was absent at the OAL. As a result of this letter, the appointing authority instituted disciplinary action. The appellant was charged with conduct unbecoming a public employee and falsification. A Final Notice of Disciplinary Action (FNDA) was issued on July 13, 2005, removing the appellant from employment effective December 18, 2004. The appellant did not appeal this notice. On August 23, 2005, the appointing authority filed a motion to dismiss the instant appeal on the basis that the appeal was moot since the appellant did not file an appeal of the July 13, 2005 FNDA. The appellant did not submit any argument to the contrary. Moreover, a hearing was scheduled at the OAL on September 7, 2005. However, the appellant failed to appear and did not present reasons for his absence. The ALJ concluded that the appellant's appeal should be dismissed on the basis that he did not appear at the September 7, 2005 hearing. Moreover, the ALJ determined that the appellant's removal should be affirmed on the later charges for his failure to appeal the July 13, 2005 FNDA.

The Board agrees with the ALJ in dismissing the appellant's appeal for his failure to appear at the September 7, 2005 hearing. The appellant does not present any justification whatsoever to excuse his absence. As such, the appellant's removal is sustained. However, the Board disagrees with the ALJ's assessment as to the July 13, 2005 charges. In this regard, the appellant's alleged conduct occurred after his removal. Under these particular circumstances, the appointing authority no longer has jurisdiction to charge the appellant. Thus, the appellant's removal on those charges is inappropriate.¹ Accordingly, the appellant's appeal is dismissed for his failure to appear at the September 7, 2005 hearing.

ORDER

Therefore, the Board dismisses the appeal of Rashonn Drayton and upholds the appellant's removal.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

¹ However, the Board notes that if an employee is reinstated, an appointing authority may institute disciplinary action upon the employee's reinstatement for conduct occurring after an improper removal.